

AMENDED IN SENATE SEPTEMBER 7, 2011

AMENDED IN SENATE SEPTEMBER 2, 2011

AMENDED IN SENATE JULY 12, 2011

AMENDED IN ASSEMBLY APRIL 15, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 931

Introduced by Assembly Member Dickinson

February 18, 2011

An act to amend Section 21159.24 of, to add Section 21155.5 to, and to add and repeal Section 21155.4 of, the Public Resources Code, relating to the environment.

LEGISLATIVE COUNSEL'S DIGEST

AB 931, as amended, Dickinson. Environment: CEQA exemption: housing projects.

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

CEQA exempts infill housing projects meeting specified criteria, including, among other things, that a community-level environmental review was adopted or certified within 5 years of the date that the application for the project is deemed complete and the project promotes higher density infill housing. CEQA conclusively presumes that a project with a density of at least 20 units per acre promotes higher density infill housing. For the purposes of this exemption, CEQA defines “residential projects” to mean, among other things, a use consisting of residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 15% of the total floor area of the project.

This bill would instead exempt a project that may be used for neighborhood-serving goods, services, or retail uses to a level that does not exceed 25% of the total building square footage of the project.

(2) Because this bill would require a lead agency to determine whether a housing project meets the above criteria to qualify for an exemption from CEQA, the bill would impose a state-mandated local program.

(3) CEQA authorizes the use of a sustainable communities environmental assessment or modified environmental impact report for the purposes of CEQA for a transit priority project meeting specified requirements.

This bill would authorize, until the adoption by a metropolitan planning organization of a sustainable communities strategy, the use of a sustainable communities environmental assessment or modified environmental impact report for a transit proximity project *or an employment priority project* meeting specified conditions. The bill would repeal this provision on January 1, 2015. The bill would authorize the use of a sustainable environmental assessment or modified environmental impact report for employment proximity projects meeting specified conditions.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) In 2008, the Legislature passed and the Governor signed
4 Senate Bill 375, which was chaptered as Chapter 726 of the Statutes
5 of 2008, requiring metropolitan planning organizations to adopt a
6 sustainable community strategy that will comprehensively integrate
7 land use planning, transportation investments, and climate policy.
8 Part of Chapter 726 of the Statutes of 2008 includes incentives
9 under the California Environmental Quality Act (Division 13
10 (commencing with Section 21000) of the Public Resources Code)
11 to encourage development patterns that would help implement the
12 sustainable communities strategy.

13 (b) Metropolitan planning organizations will begin adopting
14 these strategies in 2011, but adoption will not be complete until
15 2013.

16 (c) One of the incentives created under Chapter 726 of the
17 Statutes of 2008 is the sustainable communities environmental
18 assessment that provides a more expeditious review under the
19 California Environmental Quality Act for residential and mixed-use
20 residential projects that have a proximity to transit.

21 (d) Because of the severe recession that continues to impact
22 California and because of the need to promote jobs in the
23 construction industry, it is important to make the sustainable
24 communities assessment available as early as possible in order to
25 promote the construction of projects that will foster the use of
26 transit.

27 (e) For urban infill residential projects meeting certain
28 requirements, the California Environmental Quality Act also
29 exempts those projects from some of its requirements. The limited
30 exemption was enacted by Chapter 715 of the Statutes of 2006.
31 Chapter 726 of the Statutes of 2008 amended the California
32 Environmental Quality Act by adding Section 25115.1 to the Public
33 Resources Code to exempt transit priority projects, which may
34 include those urban infill residential projects, from its requirements.
35 These two exemptions are inconsistent with each other. To promote
36 the policies of Chapter 726 of the Statutes of 2008, it is important
37 to sunset the limited exemption provided under Chapter 715 of the
38 Statutes of 2006 after a sustainable communities strategy has been

1 adopted by all of the metropolitan planning organizations so that
2 Section 21155.1 of the Public Resources Code is the exclusive
3 exemption under the California Environmental Quality Act of
4 urban infill projects.

5 SEC. 2. Section 21155.4 is added to the Public Resources Code,
6 to read:

7 21155.4. (a) A transit proximity project *or an employment*
8 *priority project as defined in subdivision (b) of Section 21155.5* that
9 (1) includes a major transit stop as part of the project or (2) that is
10 located within ~~one-quarter~~ *one-half* mile of an existing major transit
11 stop or an existing high-quality transit corridor may be reviewed
12 under the procedures set forth in subdivision (b) or (c) of Section
13 21155.2 if the project has incorporated all mitigation measures or
14 best practices recommended *to be included with the project* for
15 protection of public health by the local air district, air pollution
16 control district, or air quality management district. *Mitigation*
17 *measures or best practices adopted by a local air district, air*
18 *pollution control district, or air quality management district shall*
19 *include, but are not limited to, the following:*

20 (1) *The best available technology for high efficiency particle*
21 *air filtration.*

22 (2) *Optimization of air intake locations to minimize indoor air*
23 *pollution.*

24 (3) *Consideration of tree landscaping and the setback of*
25 *residential buildings away from pollution sources.*

26 (b) For purposes of this section, a transit proximity project is
27 one that satisfies paragraphs (1) and (2) of subdivision (b) of
28 Section 21155 and is located within an urbanized area.

29 (c) For the ~~purpose~~ *purposes* of this section, the following
30 definitions apply:

31 (1) ~~“High-quality transit corridor” has the same meaning as set~~
32 ~~forth in subdivision (b) of Section 21155.~~

33 (2) ~~“Major transit stop” has the same meaning as set forth in~~
34 ~~Section 21064.3.~~

35 (1) *“Floor area ratio” (FAR) means the ratio of gross building*
36 *area (GBA) of development, exclusive of structured parking areas,*
37 *proposed for the project divided by the total net lot area (NLA).*

38 (2) *“Gross building area” means the sum of all finished areas*
39 *of all floors of a building included within the outside faces of its*
40 *exterior walls.*

1 (3) “High-quality transit corridor” has the same meaning as
2 set forth in subdivision (b) of Section 21155.

3 (4) “Lot” means all parcels utilized by the project.

4 (5) “Major transit stop” has the same meaning as set forth in
5 Section 21064.3.

6 (6) “Net lot area” means the area of a lot excluding publicly
7 dedicated land, private streets that meet local standards, and other
8 public use areas as determined by the local land use authority.

9 (d) This section shall apply only to projects located within a
10 metropolitan planning organization and shall cease to apply to
11 projects upon the adoption by that metropolitan planning
12 organization of a sustainable communities strategy pursuant to
13 Section 65080 of the Government Code.

14 (e) This section shall remain in effect only until January 1, 2015,
15 and as of that date is repealed, unless a later enacted statute, that
16 is enacted before January 1, 2015, deletes or extends that date.

17 SEC. 3. Section 21155.5 is added to the Public Resources Code,
18 to read:

19 21155.5. (a) An employment priority project may be reviewed
20 under the procedures set forth in subdivision (b) or (c) of Section
21 21155.2 if the project has incorporated all feasible mitigation
22 measures or best practices recommended for the protection of
23 public health by the local air district, air pollution control district,
24 or air quality management district.

25 (b) For the purposes of this section, an employment priority
26 project is a project located on property zoned for commercial uses
27 with a floor area ratio no less than 0.75 and that is located within
28 one-half mile of a major transit stop or high-quality transit corridor
29 included in a regional transportation plan.

30 (c) For the purposes of this section, the following definitions
31 apply:

32 (1) “Floor area ratio” (FAR) means the ratio of gross building
33 area (GBA) of development, exclusive of structured parking areas,
34 proposed for the project divided by the total net lot area (NLA).

35 (2) “Gross building area” means the sum of all finished areas
36 of all floors of a building included within the outside faces of its
37 exterior walls.

38 (3) “High-quality transit corridor” has the same meaning as set
39 forth in subdivision (b) of Section 21155.

40 (4) “Lot” means all parcels utilized by the project.

(5) “Major transit stop” has the same meaning as set forth in Section 21064.3.

(6) “Net lot area” means the area of a lot excluding publicly dedicated land, private streets that meet local standards, and other public use areas as determined by the local land use authority.

(d) This section shall only apply to projects located within a metropolitan planning organization and designated as an employment priority in an approved sustainable community strategy or alternative planing strategy.

SEC. 4. Section 21159.24 of the Public Resources Code is amended to read:

21159.24. (a) Except as provided in subdivision (b), this division does not apply to a project if all of the following criteria are met:

(1) The project is a residential project on an infill site.

(2) The project is located within an urbanized area.

(3) The project satisfies the criteria of Section 21159.21.

(4) Within five years of the date that the application for the project is deemed complete pursuant to Section 65943 of the Government Code, community-level environmental review was certified or adopted.

(5) The site of the project is not more than four acres in total area.

(6) The project does not contain more than 100 residential units.

(7) Either of the following criteria are met:

(A) (i) At least 10 percent of the housing is sold to families of moderate income, or not less than 10 percent of the housing is rented to families of low income, or not less than 5 percent of the housing is rented to families of very low income.

(ii) The project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for very low, low-, and moderate-income households at monthly housing costs determined pursuant to paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code.

(B) The project developer has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the development of an equivalent number of units that would otherwise be required pursuant to subparagraph (A).

(8) The project is within one-half mile of a major transit stop.

1 (9) The project does not include any single level building that
2 exceeds 100,000 square feet.

3 (10) The project promotes higher density infill housing. A
4 project with a density of at least 20 units per acre shall be
5 conclusively presumed to promote higher density infill housing.
6 A project with a density of at least 10 units per acre and a density
7 greater than the average density of the residential properties within
8 1,500 feet shall be presumed to promote higher density housing
9 unless the preponderance of the evidence demonstrates otherwise.

10 (b) Notwithstanding subdivision (a), this division shall apply
11 to a development project that meets the criteria described in
12 subdivision (a), if any of the following occur:

13 (1) There is a reasonable possibility that the project will have
14 a project-specific, significant effect on the environment due to
15 unusual circumstances.

16 (2) Substantial changes with respect to the circumstances under
17 which the project is being undertaken that are related to the project
18 have occurred since community-level environmental review was
19 certified or adopted.

20 (3) New information becomes available regarding the
21 circumstances under which the project is being undertaken and
22 that is related to the project, that was not known, and could not
23 have been known, at the time that community-level environmental
24 review was certified or adopted.

25 (c) If a project satisfies the criteria described in subdivision (a),
26 but is not exempt from this division as a result of satisfying the
27 criteria described in subdivision (b), the analysis of the
28 environmental effects of the project in the environmental impact
29 report or the negative declaration shall be limited to an analysis
30 of the project-specific effect of the projects and any effects
31 identified pursuant to paragraph (2) or (3) of subdivision (b).

32 (d) For the purposes of this section, “residential” means a use
33 consisting of either of the following:

34 (1) Residential units only.

35 (2) Residential units and primarily neighborhood-serving goods,
36 services, or retail uses that do not exceed 25 percent of the total
37 building square footage of the project.

38 SEC. 5. No reimbursement is required by this act pursuant to
39 Section 6 of Article XIII B of the California Constitution because
40 a local agency or school district has the authority to levy service

- 1 charges, fees, or assessments sufficient to pay for the program or
- 2 level of service mandated by this act, within the meaning of Section
- 3 17556 of the Government Code.

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